

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**TODD WELLER,
HEATHER ROMERO WELLER,
BARGAIN TOWN AUTO SALES, INC.,
AIRPORT MOTORS, INC.,**

Petitioners,

v.

Case No.

UNITED STATES OF AMERICA,

Respondent.

PETITION TO QUASH SUMMONS

Pursuant to 26 U.S.C. § 7609(b)(2), the petitioners, Todd Weller, Heather Romero Weller, Bargain Town Auto Sales, Inc. and Airport Motors, Inc. move the Court to quash the summons issued to Jon Buerger of EWH Small Business Accounting for the books, records and papers, related to Todd Weller, Heather Romero Weller, Bargain Town Auto Sales, Inc. (improperly referenced as "Bargain Town Autos Inc."), and Airport Motors, Inc. (improperly referenced as "Airport Motors Inc.").

PARTIES

(1) The petitioners, Todd Weller and Heather Romero Weller, husband and wife, are adult citizens of the State of Wisconsin who reside at N55 W21760 Adamdale Drive, Menomonee Falls, Wisconsin 53051.

(2) The petitioner, Bargain Town Auto Sales, Inc., was incorporated under the laws of the State of Wisconsin on February 21, 1996. On June 9, 2006, Bargain Town Auto Sales, Inc.

changed its name to Airport Motors, Inc. The most recent principal place of business of Bargain Town Auto Sales, Inc. n/k/a Airport Motors, Inc. was 3210 West Lincoln Avenue, Milwaukee, Wisconsin 53215. The petitioner, Todd Weller, was the sole shareholder of Bargain Town Auto Sales, Inc. n/k/a Airport Motors, Inc. Airport Motors, Inc. was dissolved on July 13, 2007.

(3) Pursuant to Internal Revenue Service Form 2033, the United States of America is named as the respondent.

VENUE AND JURISDICTION

(4) On September 11, 2014, the Internal Revenue Service, by agent Kip Ambrosius, the individual leading the audit, issued a third-party summons to Jon Buerger of EWH Small Business Accounting. A copy of the summons is attached hereto as Exhibit 1.

(5) The summons was sent to 20670 Watertown Road, Suite 1040, Waukesha, Wisconsin 53186. This address is located in the Eastern District of Wisconsin. Therefore, the Court has jurisdiction to hear this petition under 26 U.S.C. 7609(h)(1).

OBJECTION TO ENFORCEMENT OF SUMMONS

(6) A court should quash a summons if the information sought is not relevant to a legitimate IRS investigation. *See 2121 Arlington Heights Corp. v. I.R.S.*, 109 F.3d 1221, 1224 (7th Cir. 1997). In this context, a finding of relevance requires that the court conclude "that the inspection of the desired records 'might throw light' upon the correctness of the taxpayer's return and liabilities." *U.S. v. Kis*, 658 F.2d 526, 537 (7th Cir. 1981) (citation omitted).

(7) The Internal Revenue Service is auditing tax returns filed by petitioners Todd and Heather Weller for the tax years of 2010, 2011, and 2012. Yet, the summons requires Jon Buerger of EWH Small Business Accounting to provide documents for a significantly greater

period of time, with some requests reaching back as far as 1997. Specifically, the summons requires Buerger to provide:

all documents used in order to prepare federal income tax returns including any amendments filed for the following persons/entities:

1. Todd Weller for the tax periods ending December 31, 1997 through December 31, 2012 for the Federal Form 1040.
2. If you prepared tax returns for Heather Romero for the tax periods 2005 through 2012 please provide copies of those returns as well.
3. Airport Motors Inc., and/or Bargain Town Autos Inc., for the tax periods 1997 (Start of business) through Tax year 2007 (final return of business) for Federal Form 1120 and/or 1120S and/or 1065.
4. Franklin Meadows LLC., for the Tax Period 2010 through 2012.
5. Any other tax returns and/or financial statements you prepared on behalf of Todd Weller and/or Heather Romero-Weller and/or any of their entities either directly or indirectly.

(8) The petitioners object to the summons because all or part of the information sought by the summons for the years 1997 through 2009 is not relevant in the determination of the correctness of the tax returns filed by petitioners Todd Weller and Heather Romero Weller.

WHEREFORE, petitioners request that the Court issue an order quashing the summons issued to Jon Buerger EWH Small Business Accounting, and for such other and further relief as the Court may deem just and equitable.

Dated this 30th day of September, 2014.

s/ Neal S. Krokosky

Robert B. Teuber, Wis. Bar No.: 1030534

Neal S. Krokosky, Wis. Bar No.: 1061620

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